

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

04/19/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000430

FILED: _____

STATE OF ARIZONA

GARY L SHUPE

v.

CHARLES ESTEVAN BURNHAM

MICHAEL J DEW

PHX CITY MUNICIPAL COURT
REMAND DESK CR-CCC
FINANCIAL SERVICES-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #5664535

Charge: 1. DUI/ALCOHOL
2. DUI W/AC OF .10 OR HIGHER

DOB: 04/07/71

DOC: 10/20/99

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the Phoenix City Court, and the Memoranda submitted by counsel.

Both parties agree that the trial court did not inform Appellant of those constitutional rights he waived when he agreed to submit the case to the court for decision on a stipulated record and waived his right to jury trial, cross-examination, confrontation and the right to present evidence on his own behalf. Arizona law is in complete accord with Federal law which requires that the trial court must determine that a Defendant understands the significance and consequences of submitting a case on a stipulated record. The trial court record must reflect a specific waiver by the Defendant of those constitutional rights and that the waiver was freely, intelligently, and voluntarily made.¹

The record does not reflect such a waiver in this case. Appellee urges that this Court remand for a hearing by the trial court to determine, retrospectively, if Appellant was aware of the rights that he had waived and if the waiver was knowingly, intelligently and voluntarily made. However, there is nothing in the record from which the trial judge could make that determination, except by Appellant's own testimony.

IT IS THEREFORE ORDERED reversing the judgments of guilt and sentences imposed.

IT IS FURTHER ORDERED remanding this order back to the Phoenix City Court for a new trial and/or plea.

¹ Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); State v. Crowley, 111 Ariz. 308, 528 P.2d 834 (1974).